

ORDINANCE NO. _____, SERIES 2007

AN ORDINANCE AMENDING AND REENACTING SECTIONS 110.01 THROUGH 110.11, 110.13, 110.14, 110.98 AND 110.99 OF THE LOUISVILLE/JEFFERSON COUNTY METRO CODE OF ORDINANCES (LMCO) RELATING TO OCCUPATIONAL LICENSE TAX (As Amended).

SPONSORED BY: COUNCILMEN, BLACKWELL, KRAMER AND DOWNARD

NOW, THEREFORE BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNT METRO GOVERNMENT (COUNCIL) AS FOLLOWS:

SECTION I. LMCO Sections 110.01 through 110.11, 110.13, 110.14, 110.98 and 110.99 are hereby amended and reenacted to read as follows:

110.01 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUSINESS, PROFESSION or OCCUPATION. An enterprise, activity, trade, profession, occupation or undertaking of any nature conducted for gain or profit, whether conducted by a natural person, partnership, association, corporation, fiduciary or any other entity. However, this term shall not include the usual activities of boards of trade; chambers of commerce; trade associations or unions, or other association performing the services usually performed by trade associations or unions; Community Chest funds or foundations; corporations or associations organized and operated exclusively for religious, charitable, scientific, literary, educational, or civic purposes, or for the prevention of cruelty to children or animals; or clubs or fraternal organizations operated exclusively for social, literary, educational, or fraternal purposes, where no part of the earnings,

income or receipts of such units, groups, or associations inures to the benefit of any private shareholder or individual.

COMMISSION. The Louisville/Jefferson County Metro Revenue Commission.

COMMISSIONERS. The Commissioners of the Louisville/Jefferson County Metro Revenue Commission.

CORPORATION. An entity created or denominated as a corporation under the laws of any state, territory or dependency of the United States or of any foreign nation, or otherwise existing under color of law as a corporation, including a nonprofit corporation and a joint stock company and recognized as such for federal income tax purposes.

COUNTY. Jefferson County, Kentucky.

EMPLOYEE. Any individual who performs services subject to control by an **EMPLOYER** both as to what services shall be performed and as to how they shall be performed. In determining whether an individual is an **EMPLOYEE** or an **INDEPENDENT CONTRACTOR**, the Secretary-Treasurer shall apply the definitions of these terms found at Official Treasury Regulation 31.3401(c)1 (as same was in effect on January 1, 1992) and shall consider the following factors:

(1) *Instructions.* An employee must comply with instructions about when, where, and how to work. Even if no instructions are given, the control factor is present if the employer has the right to give instructions.

(2) *Training.* An employee is trained to perform services in a particular manner. Independent contractors ordinarily use their own methods and receive no training from the purchasers of their services.

(3) *Integration.* An employee's services are integrated into the business operations because the services are important to the success or continuation of the business. This shows that the employee is subject to direction and control.

(4) *Services rendered personally.* An employee renders services personally. This shows that the employer is interested in the methods as well as the results.

(5) *Hiring assistants.* An employee works for an employer who hires, supervises and pays assistants. An independent contractor hires, supervises and pays assistants under a contract that requires him or her to provide materials and labor and to be responsible only for the result.

(6) *Continuing relationship.* An employee has a continuing relationship with an employer. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals.

(7) *Set hours of work.* An employee has set hours of work established by an employer. An independent contractor is the master of his or her own time.

(8) *Full-time work.* An employee normally works full time for an employer. An independent contractor can work when and for whom he or she chooses.

(9) *Work done on premises.* An employee works on the premises of an employer or works on a route or at a location designated by an employer.

(10) *Order or sequence set.* An employee must perform services in the order or sequence set by an employer. This shows that the employee is subject to direction and control.

(11) *Reports.* An employee submits reports to an employer. This shows that the employee must account to the employer for his or her actions.

(12) *Payments.* An employee is paid by the hour week or month. An independent contractor is paid by the job or on a straight commission.

(13) *Expenses.* An employee's business and travel expenses are paid by an employer. This shows that the employee is subject to regulation and control.

(14) *Tools and materials.* An employee is furnished significant tools, materials and other equipment by an employer.

(15) *Investment.* An independent contractor has a significant investment in the facilities he or she uses in performing services for someone else.

(16) *Profit or loss.* An independent contractor can make a profit or suffer a loss.

(17) *Work for more than one person or firm.* An independent contractor gives his or her services to two or more unrelated persons or firms at the same time.

(18) *Offers services to general public.* An independent contractor makes his or her services available to the general public.

(19) *Right to fire.* An employee can be fired by an employer. An independent contractor cannot be fired so long as he or she produces a result that meets the specifications of the contract.

(20) *Right to quit.* An employee can quit his or her job at any time without incurring liability. An independent contractor usually agrees to complete a specific job and is responsible for its satisfactory completion or is legally obligated to make good for failure to complete it.

EMPLOYER. Any natural person, corporation, fiduciary, partnership, association, joint venture or other unincorporated organization, group or entity or governmental body, unit, administration, or agency which is deemed by Official Treasury Regulation 31.3401(d)-1 (as same was in effect on January 1, 1992) to be an **EMPLOYER** by federal law for purposes of withholding federal income tax on **EMPLOYEES**, regardless of whether such employer is engaged in a business, profession or occupation as defined above.

INDEPENDENT CONTRACTOR. A person who is subject to the control and direction of another only as to the result of his work, and not as to means and who is therefore not an **EMPLOYEE**. See also **EMPLOYEE**.

INDIVIDUAL. A natural person.

INTERNAL REVENUE CODE. The Internal Revenue Code in effect on December 31, 2006, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2006 that would otherwise terminate.

LICENSEE. Any person required hereunder to file a return or to pay a license fee thereon under ordinance.

LOUISVILLE METRO. Jefferson County, Kentucky.

METRO GOVERNMENT. Louisville/Jefferson County Metro Government.

NET PROFIT.

(1) The taxable income from the operation of a business, profession, occupation or enterprise for federal income tax purposes after provisions for all costs and expenses incurred in the conduct thereof. For corporations (other than S corporations), **NET PROFIT** shall mean the licensee's **TAXABLE INCOME** for federal income tax purposes; plus:

(a) Any sum deducted for federal income tax purposes as net operating loss carry forwards or carrybacks; plus

(b) Any deductions for federal income tax purposes for state or local taxes based on income; less

(c) Interest on U.S. obligations after deducting from such interest any expenses definitely related thereto; less

(d) To the extent not otherwise excluded, the amount of foreign dividend gross-up under Section 78 of the Internal Revenue Code; less

(e) To the extent not otherwise excluded, the amount of Subpart F income included under Section 951 of the Internal Revenue Code but not actually received; less

(f) For taxable years beginning on or after July 1, 1986, the amount of dividends described in Section 862(a)(2) of the Internal Revenue Code after deducting from such dividends the expenses and other deductions properly apportioned or allocated thereto as provided under Section 862(b); less

(g) For taxable years beginning on or after July 1, 1987 interest income described in Section 862(a)(1) of the Internal Revenue Code, rental or royalty income described in Section 862(a)(4) of the Internal Revenue Code and other gains and profits described in Sections 862(a)(5) and 862(a)(6) of the Internal Revenue Code, after deducting from such interest, rental, royalty, gain or profit the expenses, losses and other deductions properly apportioned or allocated thereto as provided in Section 862(b) of the Internal Revenue Code; plus

(h) For taxable years beginning on or after July 1, 1987 any deduction claimed by the licensee on its federal income tax return for any loss arising from the sale of its interest in any corporation other than a corporation described in Section 861(a)(2) of the Internal Revenue Code; plus

(i) For taxable years beginning on or after July 1, 1987 any deduction claimed by the licensee on its federal income tax return for any loss arising from default under any bond, note or other obligation bearing interest of a type described in Section 862(a)(1) of the Internal Revenue Code, and for any loss arising from any property described in Section 862(a)(4), Section 862(a)(5) and Section 862(a)(6) of the Internal Revenue Code; less

(j) Any sum elected by the licensee as a credit against its federal income tax liability in lieu of a deduction for business expenses otherwise available to the licensee; and

(k) Subject to such other adjustments as may be required under this ordinance or otherwise by law.

(2) For partnerships and S corporations, **NET PROFIT** shall mean the licensee's gross receipts or sales from its trade, business, profession or occupation including but not limited to interest, dividends, rents, royalties, ordinary and capital gains or losses and other income as defined for federal income tax purposes; less:

(a) Except as more expressly provided ordinary and necessary expenses of the trade, business, profession or occupation such as are defined for federal income tax purposes in the Internal Revenue Code, including but not limited to depreciation and interest expenses; plus

(b) Any deductions for federal income tax purposes for local taxes based on income; plus

(c) Income adopted and effective through separately on the federal income tax return from the partnership to the partners; less

(d) Expenses which are adopted and effective through separately on the federal income tax return from the partnership to the partners except contributions to Keogh (HR-10) Retirement Plans and contributions to a Simplified Employee Pension Plan as defined in Section 408(k) of the Internal Revenue Code and to any other self-employment retirement plan; less

(e) "Professional expenses not reimbursed by the partnership" which for federal income tax purposes claimed on the partner's federal tax returns; less

(f) Interest on U.S. obligations after deducting from such interest any expenses definitely related thereto; less

(g) Any sum elected by the licensee as a credit against its federal income tax liability in lieu of a deduction for business expenses otherwise available to the licensee; and

(h) Subject to such other adjustments as are applicable pursuant to the immediately preceding paragraph hereof with respect to corporate licensees pertaining to dividends, interest, rents, royalties, gains, and profits or losses described in Sections 861 and 862 of the Internal Revenue Code; and

(i) Subject to such other adjustments as may be required under this ordinance or otherwise by law.

(3) Notwithstanding the foregoing, for purposes of this ordinance, S corporations and partnerships shall be considered separate entities. No licensee shall be required or permitted to include in its income subject to the net profits license fee its share of any item of income or deduction from partnerships or S corporations.

(4) For sole proprietors, **NET PROFIT** shall mean the licensee's gross receipts or sales from his trade, business, profession or occupation including, but not limited to rental income, royalties, non-employee compensation (including commissions, fees, or other compensation for services rendered), less (except as more expressly provided) ordinary and necessary expenses of the trade, business, profession or occupation, such as are defined as deductions for federal income tax purposes under the Internal Revenue Code, including but not limited to depreciation and interest expenses, less any sum elected by the licensee as a credit against his federal income tax liability in lieu of a deduction for business expenses otherwise available to the licensee, plus ordinary gains and capital gains from the sale of property used in the trade, business, profession or

occupation, less ordinary losses and capital losses from the sale of property used in the trade, business, profession or occupation, plus any deductions for federal income tax purposes for state or local taxes based on income, and subject to such other adjustments as may be required under this ordinance or otherwise by law. Contributions on behalf of the individual licensee to a Keogh (HR-10) Retirement Plan and contributions to a Simplified Employee Pension Plan as defined in Section 408(k) of the Internal Revenue Code and contributions to any other self employment retirement plan deductible for federal income tax purposes shall not be deductible for purposes of determining the sole proprietor's **NET PROFIT**, but all such contributions by the licensee on behalf of his common law employees shall be deductible.

PARTNERSHIP. Any unincorporated enterprise of two or more persons engaged in any business, profession or occupation recognized as a partnership for federal income tax purposes.

PERSON. Every natural person, partnership, fiduciary, association or corporation. Whenever this term is used in any clause prescribing and imposing a penalty in the nature of a fine or imprisonment, it, as applied to partnerships and associations shall mean the partners or members thereof and as applied to corporations, the officers.

RESIDENT. An individual domiciled in Louisville Metro.

SALES. Gross sales less returns and allowances from the sale of merchandise, services or both, computed by the method of accounting properly utilized by the licensee for federal income tax purposes.

SALES or SERVICES RENDERED WITHIN LOUISVILLE METRO. For purposes of calculating the numerator of the gross receipt factor, with respect to a licensee's receipts arising from the sale of tangible personal property, the gross receipts arising from the sale of property delivered to a purchaser within Louisville Metro regardless of F.O.B. point or other conditions of sale. The Commissioners by regulation shall provide for means to determine which receipts of a licensee arising other than from the sale of tangible personal property shall be deemed to have arisen within Louisville Metro.

SECRETARY-TREASURER. The Secretary-Treasurer of the Louisville/Jefferson County Metro Revenue Commission.

SOLE PROPRIETOR. A natural person engaged in any business, profession or occupation, but not as an employee.

WAGES. Shall include all salaries, wages, commissions and other compensation earned by an employee. For purposes of this definition **WAGES** shall not include amounts which are excluded for income tax purposes pursuant to Section 125 of the Internal Revenue Code. For purposes of this definition, **WAGES** shall include amounts which are deferred for purposes of federal income taxation subject to an employee election under Section 403(b), Section

401(k) or Section 457 of the Internal Revenue Code. **WAGES** shall also include any amount designated by a unit of government of any state or political subdivision thereof or by any agency or instrumentality of any of the foregoing as an employee contribution to an employees' trust described in Section 401(a) of the Internal Revenue Code or to a plan described in Section 403(a) of the Internal Revenue Code, where the employing unit has picked up the employees' contribution pursuant to the provisions of Section 414(h) of the Internal Revenue Code. **WAGES** shall also include non-cash fringe benefits taxable for federal income tax purposes as provided in this section.

110.02 PAYMENT OF LICENSE FEE REQUIRED.

(A) Every natural person, partnership, fiduciary, association, corporation or other entity engaged in any business, profession, occupation or other activity in Louisville Metro shall pay to the Commission, as collecting agent for Metro Government, an annual license fee for the privilege of engaging in these activities. This license fee shall be measured by 1.25% of all wages earned by every employee for work done or services performed or rendered in Louisville Metro; and the net profit of all businesses, professions or occupations from activities conducted in Louisville Metro. Wages are deemed to be earned in Louisville Metro when the work is done in Louisville Metro area regardless of where payment is made or received. Net profits are deemed to be earned in

Louisville Metro area according to the proration formula more specifically set forth in this ordinance.

(B) *Transit tax.* In addition to the annual license fees required elsewhere in this ordinance and by law, every natural person, partnership, association, fiduciary, corporation or other entity engaged in any business, profession, occupation or other activity in the Louisville Metro area shall pay to the Commission an annual license fee for the privilege of engaging in the activities. This license fee shall be measured by one fifth of one percent of all wages earned by every employee for work done, or services performed or rendered in Louisville Metro; and the net profit of all businesses, professions or occupations from activities conducted in Louisville Metro. Wages are deemed to be earned in Louisville Metro when the work is done in the Louisville Metro area regardless of where payment is made or received. Net profits are deemed to be earned in the Louisville Metro area according to the proration formula more specifically set forth in this ordinance.

(C) All occupational license fees, plus any applicable interest and penalties, received by the Commission pursuant to subdivision (B) above, less a fixed charge for services rendered in the amount of 1.35% of the net receipts thereof, shall be paid over monthly into, and pending disbursement be held in, a separate and special trust fund identified as the Mass Transit Trust Fund to be used solely for purposes of the Mass Transportation Program approved by the electorate of Jefferson County, November 5, 1974, and as provided in KRS Chapter 96A.

(D) Where wages under subsection (A) of this ordinance are earned for work done or services performed or rendered both within and without Louisville Metro, the license fee shall be measured by such part of the wages as is earned as a result of work done or service performed or rendered in Louisville Metro. The license fee shall be computed by obtaining the percentage which the compensation for work performed or services rendered within Louisville Metro bears to the total compensation earned.

(E) The net profits of a business, profession or occupation from activities conducted in Louisville Metro shall be computed by multiplying the entire net profit from all sources by a business apportionment percentage to be determined by the following two factor formula:

(1) Ascertaining the percentage which the gross receipts of the licensee from sales or services rendered within Louisville Metro bears to the total gross receipts from sales or services rendered wherever made.

(2) Ascertaining the percentage which the wages shown as expenses by the licensee for the period covered by the report for services performed or rendered within Louisville Metro bears to the total wages shown as expenses by the licensee for such period to all the licensee's employees for services performed or rendered within and without Louisville Metro .

(3) Adding together the percentages determined in accordance with subsections (E)(1) and (2) of this ordinance and dividing the total so obtained by two.

(4) If either factor under subsections (E)(1) and (2) of this ordinance is absent, then the business apportionment percentage shall be equal to the remaining percentage determined under subsections (E)(1) and (2) of this ordinance. A factor is not deemed to be absent merely because none of the licensee's receipts arose inside Louisville Metro or because none of the wages paid by the licensee were for services performed or rendered inside Louisville Metro.

(5) The business apportionment percentage method shall be presumed to determine fairly and correctly the licensee's net profits from business activities conducted in Louisville Metro.

(6) If the business apportionment percentage method described above, does not fairly represent the extent of the licensee's business activity in Louisville Metro, the licensee may petition for or the Commission may require the determination of net profits by use of another method, if that method fairly reflects net profits.

(7) Application to the Commission must be made in writing prior to the original due date of the licensee's annual return and shall state the specific grounds on which the use of a different method is requested and such other

proposed method of apportionment as the licensee believes proper and equitable under the circumstances, accompanied by supporting details and proofs. A copy thereof shall be served at the time of filing of the petition upon the secretary-treasurer. The filing of the return or an amended return shall not be considered a petition for the purpose of this section. Any alternate method of apportionment will be effective only if it is approved by the Commission.

(8) If the Commission concludes that the business apportionment percentage method described in this section is in fact inapplicable and inequitable, the Commission shall redetermine the net profits by such other method of allocation and apportionment as seems best calculated to assign to Louisville Metro the portion of net profits reasonably attributable to business activities conducted in the Louisville Metro area .

(9) If an alternate method of apportionment is approved by the Commission, the licensee must continue to file under the alternate method until given permission to change by the Commission.

(F) Persons required to file a return under § 110.04 and all employers must apply before commencing business for an occupational license fee reporting number (account number) and in such process shall complete and execute the questionnaire prescribed by the Commission~~er~~. Each person shall be required to complete a separate questionnaire and will be supplied a separate account number. Licensees are required to notify the Commission of changes of

address, of the cessation of business activity and of other changes which render inaccurate the information supplied in the completed questionnaire.

(G) All employers located within a Development Area created pursuant to KRS 65.490 through 65.499 and 2007 House Bill 549 shall obtain a unique accounting number for each business location in a Development Area to be used for reporting occupational license fees.

110.03 DEDUCTION TO BE MADE BY EMPLOYERS.

(A) Each employer who employs one or more persons within Louisville Metro shall deduct at the time of payment of wages to any employee the license fee measured by such wages due from each employee. In the case of compensation deferred for federal income tax purposes under Section 403(b), Section 401(k), Section 414(h) or Section 457 of the Internal Revenue Code the employer shall deduct the license fee at the time such compensation is earned by the employee. The employer shall report for the quarterly periods ending March 31, June 30, September 30 and December 31 of each year the wages from which license fees have been so withheld on or before the last day of the month following the end of each such quarter, and shall make the payment required to be made on account of such employee withholding of occupational license fees on or before the time required for the filing of the quarterly returns.

(B) Notwithstanding the provisions of subsection (A) of this ordinance, each employer who employs persons within Louisville Metro for which the aggregate

Metro Government, mass transit trust fund, and school boards occupational license fees required to be withheld from all employee wages for any one of the preceding four quarters shall have exceeded the sum of \$3,000 shall remit the occupational license fees required to be withheld from employees monthly on or before the fifteenth day of the month following the month in which the wages shall have been paid by the employer, or (in the case of deferred compensation subject to the license fees imposed hereunder) on the fifteenth day of the month following the month in which such compensation is deemed to have been earned by the employee.

(C) Each employer who employs one or more persons within Louisville Metro shall also deduct from each employee who receives non-cash fringe benefits taxable for federal income tax purposes, at the time at which the receipt of such non-cash benefits by the employee is required to be reported by the employer for federal income tax purposes, the occupational license fee arising from the employee's receipt of such compensation; and the employer shall remit to the Commissioner with the deposit made for the period in which such non-cash benefits are so reported the occupational license fee due on such non-cash fringe benefits. The employer may report the value of fringe benefits provided during any period commencing no earlier than November 1 of any year as having been paid by the employer and received by the employee during the following year provided that the reporting for occupational license fee purposes is consistent with the reporting for federal income tax purposes. For the year 1986 and after occupational license fees shall be paid on the non-cash fringe benefits

subject to federal income tax as provided by the Internal Revenue Code and as provided by the Code of Federal Regulations in effect for the licensee's taxable year; and such non-cash fringe benefits shall be valued for purposes of the imposition of the occupational license fee as provided by the Internal Revenue Code and as provided by the Code of Federal Regulations in effect for the licensee's taxable year.

(D) Each employer who employs one or more persons within Louisville Metro shall, annually on or before January 31 of each year make a return to the Commission in which is set forth the name, residence and social security number of each employee of said employer employed during the preceding calendar year, giving the amount of wages earned during such preceding year by each such employee and the amount of occupational license fees withheld pursuant to this ordinance together with a form prescribed by the Commission reconciling the sum total of compensation paid and taxes withheld as disclosed by the information return with the aggregate amount previously reported on the quarterly returns and with aggregate remittances paid for the calendar year, and such other pertinent information as the Commission may require.

(E) Each employer who employs one or more persons within Louisville Metro shall furnish each employee a statement on or before January 31 of each year showing the amount of compensation earned and the license fee deducted and paid by said employer during the preceding calendar year.

(F) Each employer who employs one or more persons within Louisville Metro, in the event of overpayment by the employer of the employee license fee, shall upon request by the employee and may on its own initiative apply to the Commission for a refund on behalf of the employee, correcting the previously submitted returns which had shown the excess withholding, and submitting such records of the payments made and amounts withheld from the employees on whose behalf a refund is sought (including proof that the employee is not a resident and/or certification of the employee's time spent inside and outside Louisville Metro) as the Secretary-Treasurer or his designee may reasonably require. Provided, however, that no employer shall be required to make an application hereunder on behalf of an employee if the employer remits the overpayment directly to the employee and unless a refund of \$1 or more is due that employee.

(G) Each employer who employs one or more persons within Louisville Metro who is notified of or discovers an underpayment by the employer of the employee license fee, shall correct the previously submitted returns which had shown the under-withholding and shall remit payment of the employee license fee not previously paid, together with any applicable penalty and interest.

(H) Each employer who employs one or more persons within Louisville Metro shall be liable jointly and severally with the employees to the Commission for failure to make payment of any license fee arising from wages earned from the employer within Louisville Metro, and any interest and penalty thereon;

provided that no employee shall be liable to the Commission for any license fee actually withheld from the employee's wages by the employer. The Commission may proceed civilly against any employer to collect the license fee, and any interest and penalty thereon whether or not employees are joined as co-defendants.

(I) Any licensee required to remit monthly any occupational license fee deducted from an employee's wages as provided in subsection (B) of this ordinance shall pay a penalty of 2½% of the deposit due but not paid and in addition shall pay simple interest at the rate of 12% per annum calculated on a daily basis from the date said payment was due until the date of payment. If the licensee has not remitted the entire sums due to be deposited for each month of the quarter by the due date of the quarterly return an additional penalty of 2½% of the total monthly deposits for the quarter due but not paid shall be assessed.

(J) Any licensee who is required hereunder to remit occupational license fees deducted from an employee's wages quarterly as provided in subsection (A) of this ordinance, but not monthly as provided in subsection (B) of this ordinance, who fails to remit on or before the date due occupational license fees due on employee's wages shall be assessed a penalty of 5% of the unpaid amount of said license fee and in addition shall pay simple interest at the rate of 12% per annum calculated on a daily basis from the date said payment was due until the date of payment.

(K) Any licensee who fails to file within 30 days after notice that the quarterly return required under this ordinance is past due, but who has made payments shall be charged a penalty of 2½% of the license fee liability for which payments have been made for the period covered by such return times the number of months or fraction thereof said return is filed past the aforesaid 30-day grace period provided that the maximum penalty thus imposed shall not exceed 10% of the paid license fee for the period covered by the return. The penalty provided in this ordinance shall be applied in addition to the penalties provided in subsections (I), (J) or (L) of this ordinance.

(L) Any person who fails to file the quarterly employer occupational license fee return required by subsection (A) of this ordinance on or before the date due shall be charged a penalty of 5% per month or fraction of a month of the amount of the unpaid occupational license fee which said return, if properly completed and filed, would have shown to be due, provided however, that said penalty shall not exceed 25% of the amount of the unpaid license fee.

(M) The interest provision of subsection (I) of this ordinance and the penalty provisions of subsections (K), (J) and (L) of this ordinance shall be applied cumulatively and imposition of these interest and penalty provisions shall not prevent the assessment of any additional penalties provided by § 110.99.

110.04 FILING OF ANNUAL RETURN.

(A) Each person subject to a license fee imposed by this ordinance shall, on or before the fifteenth day of the fourth month following the close of each year, make and file with the Commission a return, on a form furnished by or obtainable from the Commission setting forth the aggregate amount of wages or net profits during the preceding year with such other pertinent information as the Commission may require, including, but not limited to, federal income tax returns and schedules or their equivalent. The return shall also show the amount of the license fee imposed by this ordinance, and the licensee shall pay to the Commission by the due date of the return the full license fee due as shown thereon after credit is given for any prior estimated payments or credits. Provided, however, that if the entire license fee due under this ordinance has been withheld by the employer and paid to the Commission under the provisions of § 110.03 of this ordinance, no return need be filed by the employee. Provided further that where the fiscal year of the business, profession, occupation or other activity differs from the calendar year and the licensee files a federal income tax return for such other fiscal period, the license fee shall be measured by the net profits of the fiscal year, and where the return is made for a fiscal year or any other period different from a calendar year, the said return shall be made on or before the fifteenth day of the fourth month following the end of the fiscal year or other period.

(B) Notwithstanding the provisions of subsection (A) of this ordinance hereof licensees are required to make a quarterly estimated payment on the fifteenth day of the fourth, sixth, ninth and twelfth month of each fiscal year if the

licensee's or its predecessor's aggregate liability for occupational license fees, measured by net profits, due to the Metro Government, the Mass Transit-Trust Fund and the school boards (hereinafter, "licensee's liability") for the current year exceeds \$5,000.

(C) Any licensee whose licensee's liability exceeds \$5,000 during the current year shall make quarterly estimated payments equal to 22½% of the current year's licensee's liability or 25% of the immediately preceding whole (12 month) tax year licensee's liability, whichever is less. Provided, however, that if the licensee's liability for the current year is greater than \$5,000 and the licensee's liability during any one or more of the preceding three whole (12 month) tax years exceeded \$20,000, the licensee shall make quarterly estimated payments equal to the lesser of 22½% of the licensee's liability as shown on the return as filed for the current year; or 25% of the preceding whole tax year licensee's liability as shown on the return or 25% of the average of the licensee's liability as shown on the returns as filed for the three immediately preceding whole tax years, whichever is greater.

(D) Employees from whose wages license fees due hereunder have been fully withheld by their employers are not required with regard to such wages either to file an annual return pursuant to subsection (A) of this ordinance or to file estimated quarterly payments as required by subsection (B) of this ordinance. However, if for any reason license fees due hereunder have not been withheld by the employer in whole or in part, the employee is required to file an annual return

and to pay the occupational license fee due on all wages earned which have not been subject to with-holding, together with any applicable interest and penalty.

(E) Licensees who make payments of \$600 or more to natural persons other than employees (non-employee compensation payments) for services performed within Louisville Metro are hereby required to maintain records of such payments and to report such payments to the Commission by February 28 of the year following the close of the calendar year in which the non-employee compensation was paid.

(F) However, any licensee that makes non- employee compensation payments in excess of \$600 to more than 100 natural persons may comply with the requirements of subsection (E) of this ordinance by submitting copies of federal Form 1099 reporting non-employee compensation paid to natural persons at an address in Louisville Metro. Such licensees, therefore, are not required to identify services performed within Louisville Metro.

(G) Any licensee who fails to submit the minimum quarterly estimated payment required hereunder shall pay by the due date of the annual return simple interest of 12% per annum calculated on a daily basis commencing on the date the quarterly payment was due and ending on the earlier of the time when the aggregate quarterly payments submitted for the current year shall equal the minimum aggregate payments then due under subsection (C) of this ordinance for the quarters then elapsed, or the due date of the annual net profits return as provided in subsection (A) of this ordinance.

(H) Any person who fails to file the annual return on or before the date required by subsection (A) of this ordinance shall be charged a penalty of 5% per month or fraction of a month of the amount of the unpaid license fee which the return, if properly completed and filed, would have shown to be due, provided, however, that said penalty shall not exceed 25% of the amount of the unpaid license fee. Provided, however, that the penalty provisions of subsection (L) of this ordinance shall govern licensees who have received an extension of time for filing pursuant to subsection (L) of this ordinance.

(I) Any person who fails to pay on or before the date due (including any extension under subsection (L) of this ordinance) the amount of the occupational license-fee as shown on the prescribed return shall be assessed a penalty of 5% of the unpaid amount of the license fee whether or not the return has been timely filed. Any person who pays the full amount shown on the return but who fails to pay the amount of any additional occupational license fee due as finally assessed by the Commission within 15 days after the assessment becomes final shall be assessed a penalty of 5% of the unpaid amount of the license fee. However, the aforesaid 5% penalty on the amount due may be assessed without notice of final assessment of additional license fee due if the amount shown on the return is based on fraud or gross negligence. In all events the unpaid amount of any license fee shall bear interest at the rate of 12% per annum from the date originally due until paid in full.

(J) The interest provisions of subsections (G) and (I) and the penalty provisions of subsections (H) and (I) of this ordinance shall be applied cumulatively and the imposition of these interest and administrative penalty provisions shall not prevent the assessment of any additional penalties provided by § 110.99.

(K) The person making the return shall, at the time of the filing thereof, pay to the Commission the amount of license fee shown as due thereon; however, that where any portion of the license fee so due shall have been deducted at the source, credit for such amount shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of the filing of the return, as provided in this ordinance.

(L) The Secretary-Treasurer, subject to any rules and regulations, or general instructions promulgated by the Commissioners shall have the authority to extend the time for filing the return in his discretion. Such extension shall be upon the written request of the licensee or his designated representative made on or before the date upon which the return is due. However, any occupational license fees not paid by the date when payment is due under the terms of this ordinance shall bear interest at the rate of 12% per annum from the date first due until paid. In connection with the granting under this subsection of an extension of time to file a return, a late payment penalty of 1% per month, or fraction of a month, up to a maximum penalty of 5%, shall be assessed upon the balance of the license fees, as finally determined, not paid when originally due,

unless the extension granted is for no more than 30 days or unless the application for extension is accompanied by payment of an estimated license fee in an amount not less than 90% of the total license fee as finally determined.

(M) Any return required to be filed hereunder shall be considered to have been timely filed if it is postmarked or hand-delivered to the offices of the Commission on or before the due date or, in the event the due date is a Saturday, Sunday or Metro Government legal holiday, if it is postmarked or hand-delivered to the offices of the Commission on the next day which is not a Saturday, Sunday or a Metro Government legal holiday.

110.05 COLLECTION OF FEES; RECORDS.

It shall be the duty of the Commission to collect and receive the license fees imposed by this ordinance, to keep records showing the amounts received from each licensee and each employer and the date of such receipt.

§ 110.06 RULES AND REGULATIONS.

(A) The Commissioners are hereby charged with the enforcement of the provisions of this ordinance and are ~~is~~ hereby empowered to prescribe, adopt, promulgate, and enforce rules and regulations relating to all matters pertaining to the administration and enforcement of the provisions of this ordinance, including without limitation rules and regulations clarifying, construing, and supplementing the provisions of this chapter in a manner not inconsistent with any of the provisions of this ordinance, and also providing for the examination, adjustment,

and other appropriate action regarding occupational license returns as to which an overpayment or under-payment is claimed or determined to have been made. The Commissioners shall give written notice of ~~its~~ their intention to adopt or amend any regulations to the Mayor, the Council Clerk, the Chairman of the Board of the Transit Authority of River City, the Superintendent of the Jefferson County School System, the Superintendent of the Anchorage School System, the Executive Director of the Kentucky Society of Certified Public Accountants, and the President of Greater Louisville, Inc. at least 30 days prior to the final adoption of any proposed regulations or amendments and shall allow an opportunity for comment on each proposed regulation or proposed amendment prior to adoption. The rules and regulations promulgated by the Commissioners and the rulings made by the Commissioners shall be binding on all licensees and employers affected. The Commission shall not authorize any refund or credit for an overpayment of any license fee or other amount paid to the Commission unless the claim for refund or credit for overpayment is made within one year from the date of the filing of the occupational license return pursuant to which the overpayment was made or the date the return was due, whichever is later. Claims for refund or credit resulting from the licensee submitting funds in excess of the amount shown due on the occupational license return or the records of the Commission shall be filed within the time provided in this Section or one year from the date of payment, whichever is later. Claims for credit related to adjustments resulting from an audit conducted by the federal government, state government, or the Commission shall be filed within one year of the date the

original occupational license return was filed or date the original return was due or six months from the conclusion of the audit conducted by the federal government, state government, or Commission, whichever is later. In cases of audit, the Commission shall only recognize a credit to the extent it offsets occupational liability for other years covered by the audit, but no refunds shall be authorized unless applied for within the one-year period for refund claims provided for above in this section.

(B) Notwithstanding any other provision of this ordinance, the Commissioners shall have the authority to resolve occupational license fee controversies, taking into consideration the facts and circumstances of each particular matter and the hazards and costs of litigation , but only to the extent of waiving penalties or interest, in whole or in part, and only where the licensee demonstrates to the satisfaction of the Commissioners reasonable cause for the failure of the licensee to file or pay timely.

110.07 EXAMINATION AND INVESTIGATION OF BOOKS AND RECORDS.

The Secretary-Treasurer of the Commission and any employees or agents of the Commission designated in writing by him are authorized to examine the relevant books and records of any licensee, employer, or other person who may have liability under this ordinance, and to conduct such audits and investigations as may be necessary to determine the accuracy of any return made or, if no return was made, to ascertain the amount of occupational license fee and other amounts owed by any such person under the terms of this ordinance for the

years under review. Every licensee, employer, or other person who may have liability under the provisions of this ordinance is directed and required after notice of not less than ten days to provide the Secretary-Treasurer and employees or agents of the Commission designated by him the means, facilities, and opportunity, including the reasonable cooperation, to conduct such examinations and investigations as shall be lawful and necessary to determine the liability, if any, of any such person for occupational license fees and other amounts due under the provisions of this ordinance. The Secretary-Treasurer and employees or agents of the Commission designated by him are authorized to examine under oath any person concerning any return filed with the Commission and any wages or net profits which were or should have been reported to the Commission, and otherwise with regard to the liability of any person for occupational license fees or other amounts due under the terms of this ordinance. The Secretary-Treasurer and employees or agents of the Commission designated by him shall have the authority to compel the production of books and records and the attendance of all persons, whether as parties or witnesses, whom they reasonably believe to have knowledge relevant to any examination or investigation, through any and all appropriate judicial proceedings.

110.08 ACTIVITIES NOT SUBJECT TO LICENSE FEE.

No public service activity of a public service corporation, which has been classified as such by the Kentucky Revenue Cabinet, whose property is valued and assessed by the Revenue Cabinet pursuant to KRS 136.120, and which

pays an ad valorem tax and a franchise tax shall be subject to the license fee hereunder and no license fee measured by net profits under the terms of this chapter shall be imposed upon or collected from any bank, trust company, combined bank and trust company or combined trust, banking and title business in this state, or insurance companies who are licensed and pay license fees based on premiums under § §122 and 38.64, or in other cases where the Metro Government is prohibited by statute from imposing a license fee.

110.10 CONFIDENTIALITY OF INFORMATION.

Any information gained by the Commissioners, Commission, or any other official or agent or employee of the Metro Government as a result of any returns, investigations, hearings or verifications required or authorized by this ordinance shall be confidential, ~~except for official purposes and~~ except in accordance with proper judicial order or as otherwise provided by law. However, the Commissioners may disclose to the Commissioner of Revenue of the State of Kentucky or his duly authorized agent all such information and right to inspect any of the books and records of the Commission if the Commissioner of Revenue of the Commonwealth of Kentucky grants to the Commissioners the reciprocal right to obtain information from the files and records of the Department of Revenue of the Commonwealth of Kentucky and maintains the privileged character of the information so furnished to him.

110.11 NO EFFECT ON PRIOR TAX YEARS.

The enactment of this ordinance is not intended to affect the position of either the Commission or any licensee with respect to any administrative or judicial dispute concerning an interpretation of this ordinance as heretofore enacted and amended pertaining to any tax year prior to the effective date of this ordinance.

110.13 CERTAIN PERSONS SUBJECT TO LICENSE FEE.

(A) Individuals and fiduciaries acting on behalf of individuals or deceased individuals who receive income from the rental of real property located in Louisville Metro shall be rebuttably presumed deemed to be engaged in an “activity” which requires a license fee to be paid and a return to be filed, unless the annual gross receipts received from the rental of such real property in Louisville Metro is less than \$50,000; provided that all persons engaged in the rental of warehouses, apartment hotels, hotel buildings, office buildings and other similar structures where payments typically are made both for the privilege of occupying the property and for services provided for the convenience of the occupant shall be deemed with respect to such rentals to be engaged in an “activity” which requires a license fee to be paid and a return filed regardless of the amount of gross receipts received therefrom.

(B) To challenge the presumption that a person is engaged in such an “activity,” a person must file a notice of such challenge with the Secretary-Treasurer of the Commission prior to the date on which a license fee payment is due. The Secretary-Treasurer shall provide such person with an opportunity to rebut the presumption above set out.

(C) Corporations, partnerships and other associations receiving income from the rental of real property shall be deemed to be in the business of renting said property, and income derived therefrom is subject to the license fee measured by net profits.

(D) An individual who is an INDEPENDENT CONTRACTOR as defined in § 110.01 shall pay a license fee measured by NET PROFITS and an individual who is an EMPLOYEE as defined in § 110.01 shall pay a license fee measured by WAGES.

(E) Waiters, waitresses, bellhops and others receiving tip income shall be deemed to be employees with respect to any base wage and any tip income on which the employer withholds and remits a license fee, and, in addition, shall be deemed independent contractors for purposes of any tip income or other compensation received for which the employer has not withheld and remitted a license fee. An individual who receives tip income not reported by his employer is deemed to be engaged in an activity which requires him to obtain his own ~~Commission~~ license and identification number, to file an annual return as required by § 110.04, and to remit the license fee due as shown on said return.

(F) For the purpose of this ordinance, a salesperson is a natural person engaged in selling any tangible or intangible property, other than real property or any unit of services rendered on behalf of another whether for remuneration as wages or commissions. Notwithstanding any other provision herein to the contrary, where salaries, wages, commissions, and other compensation are earned both inside and outside Louisville

Metro by an individual engaged in the occupation of a salesperson, the license fee shall be measured by multiplying the total such income earned by the individual for federal income tax purposes after deduction for employee business expenses while engaged as a salesperson times the time spent by the salesperson so engaged while located in Louisville Metro divided by the total time spent by the salesperson so engaged.

110.98 SEVERABILITY.

If any provision of this chapter as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

110.99 PENALTY.

(A) Any person who shall engage within Louisville Metro in any business, profession, occupation, or other activity subject to the license fee imposed under this chapter and who shall fail to apply for an occupational license fee reporting number and to complete the questionnaire as required by § 110.02 shall be subject to a fine of not more than \$100.

(B) Any person who shall knowingly make any incomplete, false, or fraudulent return required under § 110.04 or who shall willfully fail to timely make any return required under § 110.04 upon which filing a license fee is shown to be due shall be guilty of a misdemeanor punishable by a fine not to exceed \$100 or imprisonment in the jail not to exceed 50 days or both.

(C) The ~~Secretary-Treasurer~~ Commission is authorized to initiate criminal charges, when appropriate under KRS 514.070 (Theft by failure to make required disposition of property) or any other applicable criminal statutes as may be deemed advisable against any employer who withholds occupational license fees from one or more employees employed within the Metro Government and intentionally fails to remit such license fees withheld to the Commission.

(D) Any employer who employs one or more persons within Louisville Metro who shall fail to deduct from any employee's wages at the time of payment thereof any license fee due from each employee as required by § 110.03 or who shall fail to make the annual return required under § 110.03(D) or who shall fail to furnish his employee with the statement required by § 110.03(E), or who shall fail to correct any previously submitted return upon request by the employee as required by § 110.03(F) or who shall fail to correct a previously submitted return which had reflected an under withholding of the proper license fee due arising from wages paid an employee as required by § 110.03(G) after 60 days written notice from the Commission of the failure or default during which the failure or default is not remedied shall be subject to a fine of not more than \$100.

(E) The failure of any employer or licensee to receive or procure forms or documents is not an excuse for failure to make any return or to pay the occupational license fee.

(F) Any person who shall fail or refuse to comply with the provisions of § 110.07 shall be subject to a fine of not more than \$100 or imprisonment of

not more than 30 days, or both. Each failure to appear for examination or to permit examination after proper notice shall constitute a separate offense.

(G) Any person or agent divulging any information in violation of § 110.10 shall be subject to a fine not exceeding \$100 or imprisonment not exceeding ten days, or both.

(H) Any person who pursuant to trial is found to have failed, neglected, or refused to comply with the duty to apply for an occupational license fee reporting number as required by § 110.02 and punishable under this section or who is found to have failed to comply with other duties of an employer imposed by § 110.03 and punishable under subsection (D) of this section shall have 30 days from the date of entry of judgment to apply to the Commission for an occupational license fee reporting number and to complete the questionnaire or otherwise to remedy any default or deficiency for which the person shall have been convicted. The failure of the person to apply and to complete the questionnaire or otherwise to remedy any default or deficiency for which the person shall have been convicted within this 30-day period shall be a separate offense punishable by a fine of not more than \$100 and imprisonment in the jail of not more than 50 days or both.

(I) Any corporate officer or other individual required to withhold, truthfully account for, and remit to the Commission any fee imposed by this chapter who willfully fails to withhold that fee, or truthfully account for and remit that fee, or willfully attempts in any manner to evade or defeat the payment of any fee, shall,

in addition to the sanctions provided by this section and any other penalties provided by law, be civilly liable for the total amount of the fee evaded, or not collected, or not accounted for and remitted, plus applicable penalties and interest. Neither the corporate dissolution or withdrawal of the corporation from the state nor the cessation of holding any corporate office shall discharge the foregoing liability of any person.

SECTION II. This Ordinance shall take effect upon its passage and approval.

Kathleen J. Herron
Metro Council Clerk

Rick Blackwell
President of the Council

Jerry E. Abramson
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Irv Maze
Jefferson County Attorney

BY: _____

Gldw sunset 110 Occupational License Tax 5-9-07 Draft 1
Bkn: Sunset 110 Occupational License Tax - 5-10-07 Draft 2 bkn reformatted 6-18-07.doc
Ldw Sunset 110 Occupational License Tax Draft 3 8-17-07
Tag Sunset 110 Occupational License Tax Draft 4 8-20-07
G ldw tag sunset 110 final 9-10-07
G ldw tag underline-strike through 9-130-7
Sunset 110 Occup.Lic.Tax final draft by ldw & tag 091307 Bdgt.Cmte.Amended 100307 bkn-tag Draft 7.doc

10-4-07